

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MARK EVERETT STOREY,

Petitioner,

v.

CASE NO. 06-CV-13194

HONORABLE JOHN CORBETT O'MEARA

DOUGLAS VASBINDER,

Respondent.

ORDER GRANTING PETITIONER'S MOTION
FOR A CERTIFICATE OF APPEALABILITY

Petitioner Mark Everett Storey has appealed the Court's denial of his habeas corpus petition and moved for a certificate of appealability. A certificate of appealability may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). When, as here, the "district court has rejected the constitutional claims on the merits, the showing required to satisfy § 2253(c) is straightforward: The petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

The holding in *Slack* would mean very little if appellate review were denied because the prisoner did not convince a judge, or, for that matter, three judges, that he or she would prevail. It is consistent with § 2253 that a [certificate of appealability] will issue in some instances where there is no certainty of ultimate relief. After all, when a [certificate of appealability] is sought, the whole premise is that the prisoner 'has already failed in that endeavor.'

Miller-El v. Cockrell, 537 U.S. 322, 337 (2003) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 n.4 (1983)).

Petitioner seeks a certificate of appealability on all his claims, which allege (1)

ineffective assistance of trial counsel, (2) denial of discovery, (3) prosecutorial misconduct, (4) denial of the right of confrontation (preclusion of important cross-examination), (5) denial of the right of confrontation through the prosecutor's leading questions, (6) denial of the right to present a defense, (7) erroneous findings of fact, (8) violation of the Sixth Amendment right to have the fact finder evaluate the evidence, and (9) denial of due process through the cumulative effect of the errors. Reasonable jurists could debate the Court's resolution of these claims. Accordingly, Petitioner's motion for a certificate of appealability [dkt. #41] is **GRANTED**. A certificate of appealability may issue on all Petitioner's claims.

s/John Corbett O'Meara
United States District Judge

Date: October 22, 2009

I hereby certify that a copy of the foregoing document was served upon the parties of record on this date, October 22, 2009, using the ECF system and/or ordinary mail.

s/William Barkholz
Case Manager